

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROZELLE WHITE,

Defendant-Appellant.

UNPUBLISHED

February 5, 2008

No. 275681

Wayne Circuit Court

LC No. 06-009948-01

Before: Bandstra, P.J., and Donofrio and Servitto, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions for possession with intent to deliver less than 50 grams of cocaine, MCL 333.7401(2)(a)(iv), possession with intent to deliver less than 50 grams of heroin, MCL 333.7401(2)(a)(iv), and possession with intent to deliver marijuana, MCL 333.7401(2)(d)(iii). Defendant was sentenced to 3 to 20 years' imprisonment for the possession with intent to deliver cocaine conviction, 3 to 20 years' imprisonment for the possession with intent to deliver heroin conviction, and two to four years' imprisonment for the possession with intent to deliver marijuana conviction. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that the trial court erroneously denied his motion for a mistrial because a conversation between jurors, which was overheard in part by defense counsel, constituted juror misconduct. We disagree. The decision of a trial court to grant or deny a motion for a mistrial is reviewed for an abuse of discretion. *People v Haywood*, 209 Mich App 217, 228; 530 NW2d 497 (1995). A trial court does not abuse its discretion where its decision falls within the range of principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006). "A mistrial should be granted only for an irregularity that is prejudicial to the rights of the defendant, and impairs his ability to get a fair trial." *Haywood*, *supra* at 228.

A criminal defendant has a right to be tried by a fair and impartial jury. *People v Budzyn*, 456 Mich 77, 88; 566 NW2d 229 (1997). During deliberations, the jury may consider only the evidence presented in open court, and may not consider facts not admitted into evidence. *Id.* Evidence showing outside or extraneous influences can demonstrate juror misconduct; however, misconduct is not shown with evidence of juror thought processes and inter-juror inducements. *People v Messenger*, 221 Mich App 171, 175; 561 NW2d 463 (1997).

In order to prevail on the contention that the extraneous influence was error that warrants reversal, the defendant must first prove that the jury was exposed to extraneous influences. *Budzyn, supra* at 88. “Second, the defendant must establish that these extraneous influences created a real and substantial possibility that they could have affected the jury’s verdict.” *Id.* at 89. If a defendant is able to satisfy this two-prong test, the burden then shifts to the prosecution to show that the misconduct was harmless beyond a reasonable doubt. *Id.* The prosecution meets its burden by demonstrating either that the extraneous evidence was duplicative, or that evidence of the defendant’s guilt was overwhelming. *Id.*

Here, there is no evidence that the jury was actually exposed to extraneous influences. Had any juror attempted to obtain a satellite photograph of the 667 West Alexandrine Street address for the date of August 15, 2006, during the course of defendant’s trial, defendant would satisfy the first prong of the *Budzyn* analysis. However, the jurors collectively denied using a computer to obtain photographs of the area relevant to this case. When the trial court questioned the jury, two jurors explained that the scope of the conversation was limited to whether the jurors could obtain satellite photographs of their own homes. One juror admitted to the trial court that she said, “well, maybe they should have googled the 667 Alexandrine [address] and then we wouldn’t have had to be here.” However, this juror assured the trial court that she made the comment in jest. The jury, as a whole, agreed that the explanation provided by the individual jurors, regarding the limited extent of the Google discussion, was accurate.

Further, there is no evidence, notwithstanding the jury’s explanation, that any juror accessed the Internet to obtain satellite photographs. Moreover, there is no evidence that a satellite photograph of sufficient detail to identify defendant and portray defendant’s activities at or around 667 West Alexandrine Street on August 15, 2006, at about 4:40 p.m., is obtainable. Similarly, the jurors cannot have been exposed to a cellular telephone photograph of defendant because there is no indication that such a photograph exists.

Even if defendant’s contention that the jurors’ conversation regarding the feasibility of obtaining satellite photographs of 667 West Alexandrine Street is in and of itself an extraneous influence, defendant cannot demonstrate that the influence affected the jury’s verdict. First, the jury denied that any discussion of Google’s capacity to provide satellite photographs played a part in the deliberative process. Second, defendant fails to squarely address or adequately explain how an alleged inter-juror discussion regarding the failure of both the prosecution and defense to introduce evidence of satellite photographs showing that defendant was either on location selling drugs or otherwise, could impact the jury’s deliberative process or induce the jurors to reach a particular verdict. Moreover, defendant does not explain how an alleged discussion among the jurors regarding the failure of the police to photograph defendant with a cellular telephone during the investigation would make the jury more likely to find defendant guilty. “A party may not simply announce a position and leave it to the court to search for authority or develop arguments on the party’s behalf.” *People v McKinney*, 468 Mich 928, 929; 663 NW2d 469 (2003).

Even if the jurors were exposed to an extraneous influence, and the extraneous influence somehow impacted the jury’s verdict, the error was harmless beyond a reasonable doubt. Even if the photographic evidence did exist and actually portrayed defendant engaged in selling drugs, the evidence would have been merely duplicative of the trial testimony of Detroit Police Sergeant Andrew White and Police Officer Tyrone Bates. Sergeant White testified that he

witnessed defendant engaging in two drug transactions in the vicinity of 667 West Alexandrine Street, described the transactions in detail for the jury, and identified defendant as the perpetrator at both the time of his arrest and in the courtroom. Officer Bates testified that he recovered defendant's drug cache and described the contents of the cache as packaged for sale. Further, if the jury found defendant guilty as charged despite a perceived failure by the prosecution to introduce photographic evidence of defendant engaging in drug transactions, then the evidence of defendant's guilt was overwhelming and overcame this failure.

Defendant cannot prove either that the jury was exposed to extraneous influences or establish that these extraneous influences created a real and substantial possibility that they could have affected the jury's verdict. *Budzyn, supra* at 89. Even if defendant could meet these two requirements, because any error was harmless, reversal is not warranted.

The trial court's denial of defendant's motion for a mistrial was within the range of principled outcomes. Accordingly, the trial court did not abuse its discretion.

Affirmed.

/s/ Richard A. Bandstra

/s/ Pat M. Donofrio

/s/ Deborah A. Servitto